

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs August 20, 2008

**STATE OF TENNESSEE v. TERRELL E. PAYNE**

**Appeal from the Circuit Court for Robertson County**  
**No. 05-0291     John H. Gasaway, III, Judge**

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**No. M2007-02673-CCA-R3-CD - Filed December 18, 2008**

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The defendant, Terrell E. Payne, appeals from the Robertson County Circuit Court's probation revocation for his ten-year sentence for possession of less than one-half gram of a Schedule II controlled substance with intent to resell, a Class C felony. He claims that the trial court erred in revoking his probation and ordering him to serve his sentence in confinement. We hold that the trial court did not abuse its discretion, and we affirm its judgment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and CAMILLE R. McMULLEN, JJ., joined.

Gregory D. Smith, Clarksville, Tennessee (on appeal); Roger E. Nell, District Public Defender, and Ann Marie Kroeger, Assistant Public Defender (at trial), for the appellant, Terrell E. Payne.

Robert E. Cooper, Jr., Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; John Wesley Camey, Jr., District Attorney General; and Jason Christian White, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

The defendant pled guilty and received a Range II, ten-year sentence to be served on probation. Judgment was entered on July 14, 2006, and a probation violation warrant was issued against the defendant on September 1, 2006, which alleged that he violated several rules of probation, including that he had violated the law, had not reported an arrest, had possessed a firearm, had not maintained employment, had possessed drugs, had used drugs, and had not complied with the required drug testing. Amended violation reports were filed thereafter alleging additional factual premises for the revocation request and a new ground for failure to pay court costs.

At the revocation hearing, Sergeant Adam Bennett of the Coppertown Police Department testified that he took the defendant into custody on July 15, 2007. He said the defendant had already

been detained by Robertson County deputies. He said that the defendant gave him false identification information but that he later discovered the defendant's identity from fingerprinting.

Deputy Schonheit of the Robertson County Sheriff's Department testified that he assisted Deputy Kendrick in detaining the defendant on July 15, 2007. He said that the defendant stated his name was Michael Walker but that he knew this was incorrect because he was aware the defendant's first name was Terrell. He said that the defendant would not comply with instructions to remove his hands from his pockets when the deputies were attempting to place him under arrest and that the deputies had to place the defendant on the ground and handcuff him, resulting in a resisting arrest charge.

Jim Harp testified that he was the defendant's probation officer. He said that the defendant was scheduled to report to him on a monthly basis but that he failed to report after his initial interview on July 20, 2006, until March 1, 2007. He said the defendant reported one other time on April 9, 2007. He said that on the March and April dates, the defendant tested positive for marijuana and cocaine. He said that the defendant admitted having used drugs on both occasions. However, with respect to the March drug test, he said the defendant initially denied having used drugs but admitted having done so after the test results were positive. He said that after the defendant did not return for monthly reports following the April visit, he wrote the defendant a "compliance letter" on September 25.

Mr. Harp testified that the defendant never reported that he had been arrested. He said that the defendant reported in March that he was unemployed and that in April the defendant brought a log sheet which reflected that he had made three attempts to obtain employment. He said the defendant had never provided any documentation that he had obtained employment. He said the defendant never provided any proof of having paid court costs and had not paid any supervision fees. Mr. Harp testified that he was unaware whether the defendant had been incarcerated from October 2006 until February 22, 2007, and he responded, "If you say so," when asked whether he was aware the defendant was incarcerated from July 15, 2007, until the date of the hearing.

The defendant testified that he had been in jail since July 15, 2007, and from August 3, 2006, until mid-February 2007. He said he was unable to report to his probation officer when he was incarcerated. He said that after his release, he left messages with the probation office several times, that he finally received a call to report, and that he did so in March. He said that he told the probation officer he was going to test "dirty" when the officer said he was going to give the defendant a drug test. He said that when he had a positive drug screen in April, Mr. Harp told him at first to come back on Friday but then said the defendant should not come back because the defendant was "probably going to be sent off anyway."

The defendant testified that he had a problem with marijuana and cocaine and that he had not received any treatment other than participating in A.A. and N.A. when he was on parole in 1995. He said he would like to have help with his drug problem and that he wanted to help his nine-month-old child and his eighteen-month-old child.

At the conclusion of the hearing, the court found by a preponderance of the evidence that the defendant had violated the rules of probation by committing the offenses of criminal impersonation and resisting arrest, by using illegal drugs, by failing to report two arrests, and by failing to report after he was released from jail. The court found that based upon these violations and the defendant's history, there was "no likelihood" that the defendant would rehabilitate himself if allowed to remain on probation. The court revoked probation and ordered the defendant to serve his sentence in the Department of Correction.

A trial court may revoke probation upon finding by a preponderance of the evidence that the defendant has violated a condition of probation. T.C.A. §§ 40-35-310, -311(e) (2006). If the trial court revokes probation, it can "(1) order incarceration; (2) cause execution of the judgment as it was originally entered; or (3) extend the remaining probationary period for a period not to exceed two years." State v. Hunter, 1 S.W.3d 643, 648 (Tenn. 1999). The decision to revoke probation is within the sound discretion of the trial court, and its judgment will be reversed only upon a showing of an abuse of discretion, reflected in the record by an absence of substantial evidence to support the trial court's decision. State v. Gregory, 946 S.W.2d 829, 832 (Tenn. Crim. App. 1997).

Upon consideration, we hold that the trial court's determination that the defendant had violated the terms of probation was supported by substantial evidence and that the trial court did not abuse its discretion in revoking his probation and ordering him to serve his sentence in prison. The defendant violated multiple terms of his probation, some of which were uncontested. Given the defendant's lack of regard for the terms of his probation in many respects and, particularly, his continued involvement in illegal activity, there is substantial evidence to support the trial court's determination.

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

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JOSEPH M. TIPTON, PRESIDING JUDGE